No. 97-1324

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

GEORGE WASHINGTON,
Petitioner,

v.

JOHN SUMMERVILLE, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether a cause of action alleging an unreasonable seizure accrues at the time the seizure occurs, or only when criminal proceedings arising out of that seizure terminate.

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BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit (Pet. App. 1a-21a) is reported at 127 F.3d 552 (7th Cir. 1997). The opinion of the United States District Court for the Northern District of Illinois (Pet. App. 22a-37a) is unreported.

STATEMENT

On March 9, 1991, two detectives of the Chicago Police Department, including respondent John Summerville, stopped an automobile near the intersection of Cermak Road and Fairfield Street in the City of Chicago. R. 12 at ¶ 5. *See also* R. 1 at 5. They arrested petitioner George Washington, who was a passenger in the automobile. R. 1 at 5; R. 12 at ¶ 5. Petitioner alleges that, during the arrest, Detective Summerville hit petitioner's

head against the trunk of the car. R. 12 at ¶ 7. Petitioner was then taken to the Area IV headquarters of the Chicago Police Department. R. 12 at ¶ 8.

Upon their arrival at Area IV headquarters, the detectives took petitioner to an interrogation room. R. 12 at ¶ 9. Petitioner contends that the detectives then hit his head against a wall of the interrogation room, knocking him unconscious. R. 12 at ¶ 8. Petitioner alleges that sometime later, he was handcuffed to the interrogation room wall. R. 12 at ¶ 9. According to petitioner, Detective Summerville then struck him in the throat and demanded that he make a statement. R. 12 at ¶ 10. Petitioner stated that he "did not know what Summerville was talking about," and Detective Summerville left the room. R. 12 at ¶ 10.

According to petitioner, respondent Patrick Foley, another detective, then entered the interrogation room. R. 12 at ¶ 11. Petitioner alleges that Detective Foley told him that his treatment would become worse if he did not cooperate. R. 2 at ¶ 11. Petitioner claims that he told Detective Foley that he did not know what he was talking about, and Detective Foley hit him in the face. R. 12 at ¶ 11. Detective Summerville reentered the room. R. 12 at ¶ 12.

Petitioner further alleges that Detective Summerville next told him to make a statement to the state's attorney. R. 12 at ¶ 12. When petitioner told Detective Summerville that he did not know what he was talking about, Detective Summerville allegedly kicked petitioner in the groin. R. 12 at ¶ 14. According to petitioner, Detective Summerville left and, after some time, returned, again requesting a statement. R. 12 at ¶ 13. When petitioner refused, Detective Summerville left the interrogation room. R. 12 at ¶ 14. According to petitioner, Detective Summerville reurned with a "big flashlight." R. 12 at ¶ 14. Petitioner alleges that when he again refused to make a statement, he was hit in the ribs with the flashlight. R. 12 at

¶¶ 14, 15. After Detective Summerville left the interrogation room, respondent James Capesius, another Chicago police detective, entered. R. 12 at ¶ 15. Petitioner contends that Detective Capesius told him that his treatment would become worse if he continued to refuse to cooperate. R. 12 at ¶ 15. Petitioner was told that he should give a statement, repeating what Detective Summerville told him to say. R. 12 at ¶ 17. Petitioner alleges that Detective Summerville hit him in the ribs when he refused to do so. R. 12 at ¶ 17.

Petitioner then allegedly agreed to give a statement. R. 12 at ¶ 17. Detective Summerville returned to the interrogation room with the assistant state's attorney. R. 12 at ¶ 18. Petitioner then made statements to the assistant state's attorney. R. 12 at ¶ 18.

On April 5, 1991, Washington was indicted on charges of murder. R. 12 at ¶ 21. *See also* R. Loose Pleadings (vol. 3) at Exh. 2. Petitioner filed a motion to suppress the statements that he made to the assistant state's attorney. R. 12 at ¶ 22. The state court denied petitioner's motion after extensive testimony. R. 32 at 2. *See also* R. Loose Pleadings (vol. 2) at Exh. F. The state court determined that petitioner's account of what occurred during the arrest and questioning was not credible. R. Loose Pleadings (vol. 2) at Exh. F. Petitioner moved for reconsideration of the court's decision on or about September 16, 1993 and September 22, 1993. *See* R. Loose Pleadings (vol. 2) at Exh. G. The state court denied both motions. R. 32 at 2-3.

On October 12, 1993, at the prompting of the court, Washington filed a third motion for reconsideration, based on newspaper reports that Detective Summerville was receiving treatment for substance abuse. R. 32 at 3. R. Loose Pleadings (vol. 2) at Exh. H. See *also* R. Loose Pleadings (vol. 3) at Exh. 6. On March 4, 1994, the court held a hearing on the motion. *See* R. Loose Pleadings (vol. 2) at Exh. I. After examining records related

to Detective Summerville's substance abuse problems, the court ordered that petitioner's motion to reconsider be reopened. R. Loose Pleadings (vol. 2) at Exh. I. The court went on to consider petitioner's motion to suppress. The court noted that, according to counsel for Detective Summerville, the detective would assert his Fifth Amendment privilege against compelled self-incrimination in response to any questions pertaining to his substance abuse. R. 32 at 3. *See* R. Loose Pleadings (vol. 2) at Exh. I. Given the information before it, the court determined that "there is relevant inquiry that the Defendant in this case is entitled to inquire into and . . . the witness refuses to testify pursuant to his constitutional rights." R. Loose Pleadings (vol. 2) at Exh. I at 7. The court then granted petitioner's motion to suppress his statements to the assistant state's attorney. R. 12 at ¶ 23; R. 32 at 3. See R. Loose Pleadings (vol. 2) at Exh. I. Then, on May 23, 1994, the state court granted the prosecution's motion for a nolle prosequi, dropping the charges against petitioner. R. 32 at 3.

On January 7, 1994, petitioner filed a federal civil rights action pursuant to 42 U.S.C. § 1983, naming as defendants the State's Attorney for Cook County, Illinois, Jack O'Malley, Assistant State's Attorney Michael Cawley, and Detectives Summerville, Foley, and Capesius. R. 1. On April 29, 1994, the district court ordered petitioner to show cause why his action was not untimely under the appropriate statute of limitations. R. 5. When no response was received, the district court dismissed the action on June 9, 1994. R. 6, 7. Nine months later, counsel for petitioner moved for relief from that judgment. R. 9, 11. The court granted petitioner's motion in an order dated March 8, 1995. R. 10.

On March 9, 1995, petitioner filed an amended complaint, again under Section 1983, asserting federal civil rights and state-law claims against Detectives Summerville, Foley, and Capesius, and the City of Chicago. R. 12. In count I, petitioner alleged that the detectives arrested

him without probable cause in violation of the Fourth Amendment. R. 12 at ¶¶ 26, 27. Petitioner alleged in count II that the detectives used or failed to prevent the use of excessive force against him during his arrest, also in violation of the Fourth Amendment. R. 12 at ¶¶ 28-29. In count III, petitioner alleged that he was wrongly confined and prosecuted in violation of his Fourth and Fourteenth Amendment rights. R. 12 at ¶¶ 30-31. In count IV, petitioner claimed that the detectives conspired to deprive him of his rights under the Fourth and Fourteenth Amendments. R. 12 at ¶¶ 32-35. Petitioner's remaining claims were brought under state law for intentional infliction of emotional distress, malicious prosecution, and for imposition of vicarious liability on the City as the detectives' employer. R. 12 at ¶¶ 36-45.

On April 3, 1996, the district court entered judgment against petitioner. The district court concluded that petitioner had filed his claims for unlawful arrest (count I) and use of excessive force (count II) after the expiration of the two-year statute of limitations applicable to Section 1983 claims in Illinois. Pet. App. 26a-28a. The district court also ruled that petitioner's federal malicious prosecution claim (count III) alleged no constitutional violation other than the time-barred Fourth Amendment claims, and, accordingly, dismissed it on limitations grounds as well. Pet. App. 28a-31a. Moreover, since the allegations underlying petitioner's conspiracy claim were not timely, the conspiracy claim was also dismissed. Pet. App. 34a-35a. The district court added as well that petitioner had failed to establish that his prosecution in state court had been terminated in a manner inconsistent with his innocence, a defense to both the federal and state-law malicious prosecution claims. Pet. App. 31a-34a. The district court also dismissed petitioner's remaining state-law claims on limitations and other grounds. Pet. App. 35a-36a. Petitioner appealed.

On September 17, 1997, the court of appeals affirmed. Following its prior opinion in *Booker v. Ward*, 94 F.3d

1052 (7th Cir. 1996), cert. denied, 117 S. Ct. 952 (1997), the court concluded that Fourth Amendment claims alleging an arrest without probable cause or the use of excessive force accrue when those constitutional violations occur, and not when a related state-court prosecution ultimately terminates, since Fourth Amendment claims are not necessarily inconsistent with the validity of a pending charge against the federal plaintiff. Pet. App. 5a-9a. The court also held that petitioner's federal malicious prosecution claim alleged no constitutional violation other than the time-barred Fourth Amendment claim, and for that reason encountered the same limitations bar. Pet. App. 12a-16a. The court added that petitioner's state-law malicious prosecution claim was insufficient because he could not establish that his prosecution had been terminated in a manner indicative of his innocence. Pet. App. 10a-12a. Judge Rovner concurred in part and dissented in part. She agreed that petitioner's unlawful arrest and excessive force claims were time-barred (Pet. App. 16a), but concluded that petitioner's federal and state-law malicious prosecution claims were meritorious. Pet. App. 16a-21a.

ARGUMENT

Although petitioner claims that he was arrested without probable cause and subjected to the use of excessive force during the course of that arrest and the interrogation following it, all in violation of the Fourth Amendment, he failed to bring suit for nearly three years after his arrest and interrogation. This was beyond the two-year limitations period for Section 1983 actions in Illinois. Petitioner's sole complaint about the Seventh Circuit's decision holding these claims to be time-barred rests on the happenstance that he was prosecuted in state court as a consequence of his arrest. Thus, he claims that he was unable to bring suit for the violations of the Fourth Amendment he has alleged until the charges against him were dismissed. For this, he relies on this Court's decision in *Heck v. Humphrey*, 512 U.S. 477 (1994), holding

that a Section 1983 claim often cannot be brought if it necessarily contests the validity of a state court's judgment. The court of appeals sensibly rejected that submission on the straightforward basis that petitioner's ability to recover for a constitutionally unreasonable arrest does not turn on whether he was later convicted on any charges brought against him stemming from that arrest. The guilty and innocent alike are entitled to recover if they are arrested without probable cause or subjected to excessive force within the course of that arrest. It is for that reason that petitioner's claims, even if ultimately successful, would not be inherently inconsistent with the validity of the charges against him or even an ensuing conviction, and thus, that they accrued when the constitutional violations occurred.

1. The general rule is that a cause of action accrues and the limitations period begins running when the plaintiff learns of an illegal act, and not when its consequences are felt. See *Chardon v. Fernandez*, 454 U.S. 6, 8 (1981) (per curiam); *Delaware State College v. Ricks*, 449 U.S. 250, 258 (1980). Here, the alleged violations of the Fourth Amendment occurred at the time of petitioner's arrest on March 9, 1991. Petitioner, however, did not sue the detectives who participated in his allegedly unconstitutional arrest and interrogation until January 7, 1994. The statute of limitations for Section 1983 claims arising in Illinois is two years. See, *e.g.*, *Farrell v. McDonough*, 966 F.2d 279, 282 (7th Cir. 1992), cert. denied, 506 U.S. 1084 (1993); *Kalimara v. Illinois Department of Corrections*, 879 F.2d 276, 277 (7th Cir. 1989). Since petitioner did not sue Detectives Summerville, Foley, and Capesius within two years of their allegedly unconstitutional arrest and interrogation of him, and since petitioner plainly knew of their involvement in that arrest and interrogaton and hence was able to bring suit within the limitations period, the court of appeals quite naturally concluded here that petitioner's claims against them under the Fouth Amendment were time-barred.

Petitioner nevertheless argues that he overcame this limitations problem because, under his reading of *Heck v. Humphrey*, his Fourth Amendment claims did not accrue until the criminal case against him was dismissed. See Pet. 6-8. In *Heck*, this Court held that Section 1983 claims that would have the effect of rendering the plaintiff's conviction or sentence invalid do not accrue until the conviction or sentence has been vacated. See 512 U.S. at 489-90. The Court reasoned that when the plaintiff, in order to prevail on his Section 1983 claim, would have to "negate an element of the offense of which he has been convicted," a Section 1983 claim goes to the validity of the criminal conviction and cannot properly be raised while the judgment of conviction remains outstanding. See *id.* at 486 n.6. Accordingly, "the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." *Id.* at 487. The Court made clear, however, that its holding did not bar all Section 1983 claims by those who remain in custody as the result of criminal charges: "If the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should . . . proceed. . . ." *Id.* (emphasis in original).

Heck accordingly bars only claims that necessarily impugn the validity of a conviction. See *Edwards v. Balisok*, 117 S. Ct. 1584, 1587-88 (1997). Petitioner was of course never convicted, but the court of appeals agreed with him that the holding of *Heck* applies to pending charges no less than outstanding convictions. Following *Smith v. Holtz*, 87 F.3d 108 (3d Cir.), cert. denied, 117 S. Ct. 611 (1996), the court reasoned that petitioner's cause of action would not accrue under *Heck* while charges were pending against him if his Section 1983 claims "would necessarily imply the invalidity of a potential conviction on the murder charge against him."

Pet. App. 8a. But the court of appeals concluded that petitioner's claims of an allegedly unconstitutional arrest and interrogation accrued when those violations occurred, and not later, because these Fourth Amendment claims are not necessarily inconsistent with the validity of a pending charge. See Pet. App. at 8a-9a; see also *Booker v. Ward*, 94 F.3d at 1056-57.

This holding was correct. The fact that a case against an arrestee was initiated by an unreasonable search or seizure does not necessarily mean that any charges brought against the person searched and seized—or a subsequent conviction—are invalid. If the prosecution can adduce sufficient evidence not tainted by the Fourth Amendment violation, it can sustain both the charges and an ensuing conviction. In *Gerstein v. Pugh*, 420 U.S. 103 (1975), the Court made the point quite clearly. "[T]he established rule [is] that an illegal arrest or detention does not void a subsequent conviction." *Id.* at 119. The Court reiterated in *United States v. Crews*, 445 U.S. 463 (1980), that "[a]n illegal arrest, without more, has never been viewed . . . as a defense to a valid conviction." *Id.* at 474. In *Haring v. Prosise*, 462 U.S. 306 (1983), the Court held that a prisoner's action to recover for an illegal search and seizure was not barred by his plea of guilty to possessing items found in the search because the validity of the conviction "is simply irrelevant to the legality of the search under the Fourth Amendment or Prosise's right to compensation from state officials under § 1983." *Id.* at 316. And in *Heck* itself, the Court offered as an example of the type of claim that would not impugn the validity of a conviction "a suit for damages attributable to an allegedly unreasonable search . . . even if the challenged search produced evidence that was introduced in a state criminal trial. . . ." 512 U.S. at 187 n.7. As the Court explained, "[b]ecause of doctrines like independent source and inevitable discovery, and especially harmless error, such a § 1983 action, even if successful, would not *neces-*

sarily imply that the plaintiff's conviction was unlawful." *Id.* (emphasis in original) (citations omitted).

Indeed, the notion that persons accused of crimes can recover for violations of their Fourth Amendment rights only if and when they are ultimately acquitted is a radical and indefensible interpretation of that Amendment. The Fourth Amendment provides, without qualification, that "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated" (U.S. Const. amend. IV). This text makes insupportable any claim that only persons found innocent of any wrongdoing are protected from unreasonable searches and seizures. Indeed, cases such as *Haring v. Prosise* make clear that even those who admit their guilt can recover from violations of their Fourth Amendment rights. Those rights exist wholly apart from the disposition of criminal proceedings against the person aggrieved by an unreasonable search and seizure, and hence such a person need not wait for criminal proceedings to conclude before his cause of action accrues.[1]

Petitioner nevertheless argues that under *Heck* "there must be an individualized inquiry in each case to determine whether a holding in favor of the plaintiff in the civil case would be necessarily inconsistent with the plaintiff's conviction." Pet. 6. But *Heck* requires that a Section 1983 claim "necessarily imply" the invalidity of a

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[1] In *Albright v. Oliver*, 510 U.S. 266 (1994), Justice Ginsburg expressed the view that an individual arrested without probable cause is subjected to a "continuing seizure" that does not end until the prosecution terminates, and that only then does the limitations period begin to run. See *id.* at 277-80 (concurring opinion). Petitioner has never advanced a "continuing seizure" theory during this litigation. Moreover, this theory has never been embraced by a majority of the Court, and has been rejected by a number of circuits. See, *e.g.*, *Brooks v. City of Winston-Salem*, 85 F.3d 178, 184 (4th Cir. 1996); *Reed v. City of Chicago*, 77 F.3d 1049, 1052 n.3 (7th Cir. 1996); *Valencia v. Wiggins*, 981 F.2d 1440, 1443-45 (5th Cir.), cert. denied, 509 U.S. 905 (1993).

charge or conviction for its accrual to be delayed, and here, petitioner's argument is not based on any necessary relationship between the alleged Fourth Amendment violations and the validity of the charge against him; as we explain above, the charge against him was valid regardless whether the prosecution intended to introduce evidence against him at trial that might be the fruit of a Fourth Amendment violation. Nor is the validity of a charge undermined by any decision a judge may later make to suppress some of the prosecution's evidence, or even by a prosecutor's subsequent decision to dismiss a charge voluntarily. Because a claim that evidence the prosecution intends to use at trial is the product of an unconstitutional search or seizure does not require the dismissal of a pending charge, such a claim is not necessarily inconsistent with that charge and hence has accrued under *Heck*.[2]

2. Petitioner claims that the Seventh Circuit's holding in this case is contrary to the law of no fewer than seven other circuits. See Pet. 8-9. Most of the cases that petitioner cites, however, are readily reconciled with the holding below.

For example, the decision in *Smithart v. Towery*, 79 F.3d 951 (9th Cir. 1996) (per curiam), actually embraces the reasoning of the Seventh Circuit here. Smithart claimed that he had been subjected to excessive force during the course of an arrest that resulted in his criminal conviction. Although the court observed that *Heck* bars his claims "[t]o the extent that Smithart seeks to invalidate his assault conviction" (*id.* at 952). It went on to observe that his claim of excessive force had in fact accrued because "a successful section 1983 action for excessive force would not necessarily imply the invalidity of Smithart's arrest or conviction" (*ibid.*). Similarly, although peti-

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[2] While petitioner correctly observes that Heck himself made some Fourth Amendment claims (see Pet. 6), the Court was careful to note in *Heck* that the only question before it "was whether money damages premised on an unlawful conviction could be pursued under § 1983." 512 U.S. at 480 n.2.

tioner does not mention the decision, in *Brooks v. City of Winston-Salem*, 85 F.3d 178 (4th Cir. 1996), the court also took the approach of the Seventh Circuit, reasoning that a claim of arrest without probable cause is not inherently inconsistent with the validity of a conviction even if evidence derived from the arrest is utilized to obtain that conviction. See *id.* at 182-83. See also *Wells v. Bonner*, 45 F.3d 90, 95 (5th Cir. 1995) (assuming that an excessive force claim did not go to the validity of a conviction and hence accrues when misconduct occurs). Cf. *Simmons v. O'Brien*, 77 F.3d 1093, 1094-97 (8th Cir. 1996) (Fifth Amendment claim of coerced confession accrued at the time confession was obtained).

Two of the other cases petitioner cites are about so-called malicious prosecution claims, and not claims alleging arrest without probable cause or the use of excessive force during an arrest. In *Calero-Colon v. Betancort-Lebron*, 68 F.3d 1 (1st Cir. 1995), the plaintiffs sued for malicious prosecution and each claimed that he "did not know the true nature and extent of the scheme that led to arrest until after he had been acquitted." *Id.* at 2. Under those circumstances, the court held that their cause of action did not accrue until acquittal. See *id.* at 3-4. In *Whiting v. Traylor*, 85 F.3d 581 (11th Cir. 1996), the plaintiff also brought a Section 1983 action for "malicious prosecution," and the court concluded that because malicious prosecution actions depend on the outcome of the state court proceedings, such a cause of action does not accrue until state proceedings terminate. See *id.* at 585-86. Assuming that there is a cause of action for a "malicious prosecution" under Section 1983, whether or not these cases correctly apply accrual principles to such actions does not matter here, since petitioner has not pressed his malicious prosecution theory in this Court. Hence these cases have little bearing on the question that petitioner does press.[3]

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[3] Whether a Section 1983 cause of action exists for malicious prosecution is very much an open question. See *Albright v. Oliver*,

Jackson v. Vannoy, 49 F.3d 175 (5th Cir.) (per curiam), cert. denied, 116 S. Ct. 148 (1995), is also quite different from this case. There, the plaintiff's parole had been revoked solely on the basis of his arrest, and hence a claim that he had been illegally arrested would necessarily have impugned the validity of his parole revocation. See *id.* at 176-77. In *Alvarez-Machain v. United States*, 96 F.2d 1246 (9th Cir. 1996), the plaintiff's claims also depended on the validity of his arrest. There, the plaintiff challenged his abduction in a foreign country by federal agents who brought him to the United States to face charges, claiming that they had done so in violation of an extradition treaty. That claim quite plainly went to the validity of the charges brought against him. See *id.* at 1250-51. Here, as we explain above, the unconstitutionality of petitioner's arrest or interrogation would not have been a defense in the criminal case against him. Hence, cases in which the plaintiff's attack on his arrest, if sustained, would necessarily require his release from custody have no bearing on this case.

Three of the other cases on which petitioner relies provide no basis to believe that there is a conflict between the law in the circuits that decided them and the law in the Seventh Circuit. Two of these decisions are unpublished, nonprecedential opinions of the Ninth Circuit, which contain little analysis or reasoning and even lack helpful descriptions of the plaintiffs' claims. See *Newman v. Jensen*, 1997 WL 665701 (9th Cir. 1997); *Helmet Law Defense League v. California Highway Patrol*, 1997 WL 547956 (9th Cir. 1997). Similarly, in *Mackey v. Dickson*, 47 F.3d 744 (5th Cir. 1995) (per curiam), the pro se complaint was "confusing." *Id.* at 746. The court re-

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510 U.S. at 275 (plurality opinion). In this case, the court of appeals rejected petitioner's malicious prosecution theory by concluding that he had alleged no violation of federal law other than his time-barred claims for arrest without probable cause and the use of excessive force. See Pet. App. 13a, 16a. Petitioner does not quarrel with that holding in this Court.

manded the case to the district court because it could not tell if Mackey's claims necessarily impugned the validity of his conviction. *Ibid.*

As for petitioner's three remaining cases, we acknowledge that these decisions are inconsistent with the holding below. In each case, the court concluded that allegations that an unreasonable seizure produced evidence that was important to the prior criminal case against the plaintiff stated a cause of action that would not accrue until the plaintiff's conviction were vacated. See *Hudson v. Hughes*, 98 F.3d 868, 871-72 (5th Cir. 1996); *Schilling v. White*, 58 F.3d 1081, 1085-85 (6th Cir. 1995); *Woods v. Candela*, 47 F.3d 545, 546 (2d Cir.) (per curiam), cert. denied, 116 S. Ct. 54 (1995). With respect, we think these decisions misapprehend the Court's reasoning in *Heck* as well as the teaching from other of the Court's cases that allegations of an unreasonable search or seizure do not invalidate a subsequent charge or conviction and, thus, that these allegations are not necessarily inconsistent with an outstanding judgment under which an individual remains in custody.

What is more, the rationale for the view that claims of false arrest and excessive force accrue when the constitutional violation occurs and not when subsequent criminal proceedings are terminated has yet to be reexamined by these other circuits in light of the forceful explication of its position by the Seventh Circuit in a trio of its recent opinions, *Booker v. Ward*, the decision below, and the even more recent decision in *Gonzalez v. Entress*, 133 F.3d 551 (7th Cir. 1998), in which the court addressed at some length the Sixth Circuit's reasoning in *Schilling*, explaining:

> Part of *Schilling*'s rationale—that *Heck* applies to persons detained pending trial, as well as to those who have already been convicted—is unexceptional. But to say that *Heck* "applies" is not to say that it requires dismissal of a suit seeking damages for the

> arrest or search, as opposed to damages for wrongful conviction. Wrongful invasions of privacy are actionable in trespass, and wrongful detentions actionable under state law and the fourteenth amendment, no matter what happens to a criminal prosecution. Suppose a person says something like "I was arrested without probable cause and spent a night in jail until my wife came up with bail money." That injury is compensable whether or not the person is later convicted—indeed, whether or not he is later prosecuted.

Id. at 553 (citation omitted). Accordingly, other circuits may reconsider their view in light of the Seventh Circuit's recent and cogent explanations in support of its rule.

3. Petitioner advances only one policy argument in support of his position, suggesting that the rule embraced below can lead to inconsistent results or otherwise interfere with ongoing state proceedings if a state criminal proceeding addresses the merits of the defendant's Fourth Amendment claim at the same time that that individual is forced to prosecute the same claim in a Section 1983 action in order to satisfy the limitations period. See Pet. 7-8. The likelihood that the state and federal courts will reach truly inconsistent results is overstated at best, since a federal court is obligated to give a state court's findings and judgment the same preclusive effect as they would receive in the courts of the rendering state. See, *e.g.*, *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 (1982); *Allen v. McCurry*, 449 U.S. 90 (1980). And the Court anticipated parallel proceedings in *Heck*, and explained that when a Section 1983 action is brought while a related state prosecution is pending, the federal action can be stayed if it would interfere with ongoing state proceedings. See 512 U.S. at 487 n.8.

Indeed, it is petitioner's position that leads to imprudent results. On petition's view, a Section 1983 plaintiff can wait for many years before bringing his claims relating to his arrest and interrogation, since it may well take many years before the state courts vacate a conviction resting

on evidence obtained in violation of the Fourth Amendment.[4] The problems that inhere in litigating such stale claims, when memories have faded and records have been lost or destroyed, should be obvious. Such a delay is unavoidable in cases like *Heck* where the invalidity of a conviction is an element of the constitutional violation, such as cases in which the plaintiff contends that his conviction rests on the suppression of exculpatory evidence and accordingly must show not only that exculpatory evidence was suppressed but that it materially contributed to his conviction. See, *e.g.*, *Kyles v. Whitley*, 115 S. Ct. 1555, 1565-68 (1995). But such a result is surely unwarranted here. When a plaintiff claims that he has been arrested without probable cause or subjected to excessive force during the course of that arrest, all the evidence necessary to litigate the constitutionality of the police conduct is available as soon as that conduct occurs. There is accordingly no justification for delaying litigation about such conduct for many years, a consequence of the rule petitioner urges.

Moreover, petitioner's insistence on a case-by-case inquiry into whether unconstitutionally obtained evidence is necessary to the prosecution is especially difficult to apply if the plaintiff chooses to bring suit while charges against him are still pending: in such cases it will be impossible to know what evidence will be admitted at trial and how central any tainted evidence may be to the prosecution's case. Thus there is no basis under petitioner's test to determine if such a claim is barred by *Heck*. This practical problem also argues against petitioner's reading of *Heck* as requiring case-by-case analysis of whether tainted evidence is necessary to support a charge or conviction. When the accused has not been tried or convicted, it sim-

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[4] For example, in *Booker v. Ward* the plaintiff brought suit within two years of the date that his conviction was vacated, but more than seven years after his allegedly unconstitutional seizure. See 94 F.3d at 1056.

ply cannot be said that an alleged Fourth Amendment violation would necessarily taint the charge or a subsequent conviction. Petitioner's eagerness to revise stale claims thus overlooks *Heck*'s primary purpose of barring claims that are inconsistent with an outstanding state-court judgment. Under petitioner's approach, there will be no way to determine which claims of accused persons facing trial have accrued, and which must await a favorable disposition in state court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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